

MARINE AVENUE BUSINESS IMPROVEMENT DISTRICT BYLAWS

ARTICLE I Identification and Purpose

Approved March 19, 2009

1. Name of the District.

The name of the district is the MARINE AVENUE BUSINESS IMPROVEMENT DISTRICT (hereinafter "the BID").

2. Purpose of the BID.

The BID is a non-profit, non-partisan, non-sectional and non-sectarian organization established by Ordinance No.95-50 adopted by the City Council of the City of Newport Beach, CA on October 19, 1995 pursuant to the Parking and Business Improvement Area Law of 1989 (Section 36500 et seq. of the California Streets and Highways Code).

The BID was formed to promote the commercial welfare of businesses located along Marine Avenue on Balboa Island in the City of Newport Beach, California. Its authorized activities are:

- A. Marketing, advertising and public relations;
- B. Brochure development and distribution;
- C. Promotion of public events that are to take place on or in any public places in the area;
- D. Decoration of any public place in the area;
- E. Public area improvements and maintenance activities;
- F. The general promotion of retail trade activities.

ARTICLE II Membership, Assessments and Meetings

1. Qualifications and Rights of Membership.

A. Qualifications.

All businesses within the boundaries of the Marine Avenue BID, as established by City Council Ordinance 95-50, or as it may be later amended, that are required to pay the BID Assessment shall be members of the BID (Members.) The owner of the business or the owner's appointed representative shall represent the business at BID meetings.

B. Rights.

Members, whose city business license and BID assessment are paid in full and current, shall have the right to vote. There may be one voting member per business.

2. Assessments.

The BID assessment shall be as set annually by the City Council, pursuant to adoption of a Resolution of Intent to Levy Assessments and a Public Hearing on the BID renewal and the levy of assessment.

3. Meetings of Members.

A. Compliance with Brown Act.

All meetings of the Board of Directors, whether annual, special, adjourned, or otherwise, shall comply with the provisions of §54950 of the Government Code of the State of California (the “Brown Act.”)

B. Location.

Meetings shall be held at any place within the City of Newport Beach, which has been designated by the Board of Directors. The location of the meeting shall be published as part of every meeting notice posted not less than seventy-two hours in advance in keeping with the provisions of the Brown Act.

C. Annual Meeting.

An annual meeting shall be held in March or April of each year in anticipation of preparing an application for renewal of the BID. The exact date, time and location of the meeting shall be determined by the Board of Directors.

D. Regular Meetings.

Regular meetings shall be held monthly at such time and place as shall be determined by the Board of Directors.

E. Special Meetings.

A special meeting for any purpose or purposes allowed under the Brown Act, may be called at any time by any two Directors, the President of the Board of Directors, or by petition to the Board of Directors by a majority of the Members.

F. Notice to Members.

All meetings shall be noticed as required by the Brown Act. In addition, whenever Members are required or permitted to take any action at a meeting, a written notice of the meeting shall be given not less than three (3) nor more than thirty (30) days before the date of the meeting to each voting member who, on the date for notice of the meeting, is entitled to vote at the meeting. The meeting notice shall contain a description of the nature of the business to be transacted.

G. Quorum of the Board

A quorum of the Board of Directors shall be required to conduct any meeting and the provisions of the Brown Act shall apply to all actions taken by the Board.

4. Action by Written Ballot.

If the Board has solicited the input of Members for consideration of items presented to the Board, it may elect to distribute a written ballot no later than two weeks in advance of such meeting. If a written ballot is distributed, the BID shall distribute a ballot to every Member entitled to vote on such matters. Such ballots shall set forth the proposed action, provide an opportunity to specify approval or disapproval of any proposal and provide an address/location to return the ballot. Ballots may be returned before or at the meeting, provided they are submitted prior to the public opening and count of all ballots. A simple majority of ballots cast or in-person votes, including proxies, is required for an action to be valid. Unless requested by the Board of Directors, no vote need be by ballot.

5. Proxies.

A. Right of Members.

Any Member entitled to vote may authorize another person or persons to vote with respect to such membership by filing a written, executed proxy with the Board.

B. Revocability.

A validly executed proxy shall continue in full force and effect until (i) revoked by the Member executing it, before the vote is cast under that proxy (ii) by a writing delivered to the BID stating that the proxy is revoked, or (iii) by a subsequent proxy executed by that Member and presented to the meeting, or (iv) as to any meeting, by that Member's personal attendance and voting at the meeting.

ARTICLE III
Board of Directors

1. Powers.

The business and affairs of the BID shall be managed by a Board of Directors (the Board). The Board may exercise all of the powers of the BID authorized by the City of Newport Beach and the Parking and Business Improvement Area Law of 1989 (Section 36500 et seq. of the California Streets and Highways Code.) The Board shall keep full and fair accounts of its meetings and fiscal transactions.

2. Number.

A. Voting Directors.

The authorized number of voting Directors of the BID shall be as set by the City Council.

B. Ex-Officio Directors.

The Board may designate certain community or governmental representatives as ex-officio, non-voting directors. An ex-officio director shall not be counted in the total membership of the Board. Ex-officio directors shall include but not be limited to a City Liaison, a representative of the Balboa Island Improvement Association, the Balboa Ferry and the BID Administrator (a consultant paid for by the City.)

3. Nominations.

A. Time and Place.

The Board of Directors shall be nominated from eligible voting members at the annual meeting of the BID.

B. Nominations.

Candidates for the Board of Directors may be nominated by any eligible voting Member, including self-nominated Members, in advance of the annual meeting or at the annual meeting.

C. Selection of Nominees.

The then-current Board of Directors shall vote on up to 7 nominees or the number of nominees set by the City Council.

D. Submission of Nominees to City Council.

The names of nominees for the Board of Directors shall be submitted to the City Council, along with the annual report, for confirmation.

4. Resignation.

Any Director may resign at any time by giving written notice to the Board or President of the Board. The Board shall notify the City of such resignation.

5. Filling Vacancies.

Nominations to fill a vacancy on the Board may be made by majority vote of the Directors then in office. Members may vote on a nominee to fill any vacancy if the Directors fail to do so.

6. Officers.

At the next regular meeting of the Board after confirmation of the Board by the City Council, the Board shall hold its election of officers.

7. Committees of the Board.

The Board may create one or more committees to serve at the pleasure of the Board. The Board may adopt rules for the operation of any committee, provided they are consistent with these Bylaws. Committees shall comply with the Brown Act as required.

ARTICLE IV

Officers and Duties

1. Officers.

The officers of the Board of Directors shall consist of President, Vice President, Treasurer and Secretary.

2. Election.

The officers shall be chosen annually by the Board and shall serve at the pleasure of the Board.

3. Resignation.

Any officer may resign at any time by giving written notice to the Board or President of the Board.

4. Duties.

A. President.

The President shall preside at all Board meetings, may call special meetings, appoint committees and sub-committees, perform all other duties of a presiding officer, represent the BID in interactions with the City Council, city staff and other organizations, and shall carry out such other duties as directed by the Board.

B. Vice President.

The Vice President, in the absence of the President, shall perform all of the duties of the President. When as acting as President he or she shall have all the powers and be subject to all of the restrictions upon the President. The Vice President shall have such other powers and perform such other duties as directed by the Board of Directors.

C. Treasurer.

(1) Books of Account. The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and accounts of the BID's properties and transactions. The Treasurer shall prepare and deliver, or cause to be prepared and delivered to the Members and Directors such financial statements and reports as are required by law, by these Bylaws or by the Board. The books of account shall be open to inspection by any Director or Member at all reasonable times.

(2) Deposits and Disbursements. The Treasurer shall deposit, or cause to be deposited, all money and other valuables in the name and credit of the BID with such depositories as the Board may designate, shall disburse the BID's funds as the Board may order, shall render to the President if any, when requested, an account of all transactions as Treasurer and of the financial condition of the BID, and shall have such other powers and perform such other duties as the Board or these Bylaws may prescribe.

D. Secretary.

(1) Book of Minutes. The Secretary shall keep or cause to be kept, at the BID's principal office or such other place as the Board may direct, a book of minutes of all meetings, proceedings and actions of the Board and of committees. The minutes of meetings shall include the time and place of the meeting, whether the meeting was annual, regular or special, and if special, how authorized, the notice given, and the names of those present.

(2) Membership Records. The Secretary shall keep or cause to be kept, at the BID's principal office or at a place determined by a resolution of the Board, a record of the BID's Members, showing each Member's name, address and status of membership.

(3) Notices and Other Duties. The Secretary shall give, or cause to be given, notice of all meetings required by these Bylaws to be given and shall have such other powers and perform such other duties as the Board or these Bylaws may prescribe.

5. Compensation.

Directors shall receive no compensation. Upon prior approval by a majority vote of the Board and subject to City oversight and other applicable laws, a Director may be reimbursed from BID funds for expenses incurred for official BID business.

6. Meeting Attendance.

Directors shall be required to attend the monthly Board meetings and as needed various committee or sub-committee meetings. Any Director who fails to attend three or more monthly Board meetings during the fiscal year shall be subject to removal from the Board by majority vote of all Directors.

ARTICLE V

Amendments to Bylaws

Any Member may propose an amendment to these Bylaws by submitting it in writing to the Board of Directors, who shall evaluate the merit of any such proposals. All amendment proposals shall then be presented with recommendations to the voting membership at the next scheduled meeting. Amendments to the Bylaws shall require the affirmative vote of a simple majority of the voting members present and voting.

Article VI

Insurance of Officers, Employees and Other Agents

1. For the purpose of this Article:

“Agent” means any person who is or was a director, officer, employee, or other agent of this BID, or is or was serving at the request of this BID as a director, officer, employee, or agent.

2. Insurance.

The Board of Directors may authorize the purchase and maintenance of insurance on behalf of any agent of the BID against any liability asserted against or incurred by the agent in such capacity or arising out of the agent’s status as such.

ARTICLE VII

Miscellaneous

1. Annual Report.

The Board shall cause an annual report to be sent to the Newport Beach City Council thirty (30) days prior to the end of the BID’s fiscal year. Said report shall include the following:

- A. Any proposed changes in the boundaries of the parking and business improvement area or in any benefit zones within the area.
- B. The improvements and activities to be provided for that fiscal year.

- C. An estimate of the cost of providing the improvements and the activities for that fiscal year.
- D. The method and basis of levying the assessment in sufficient detail to allow each business owner to estimate the amount of the assessment to be levied against his or her business for that fiscal year.
- E. The amount of any surplus or deficit revenues to be carried over from a previous fiscal year.
- F. The amount of any contributions to be made from sources other than assessments levied pursuant to this part.
- G. Nominations for Board of Directors.

The report shall be available to the Members and to the public upon request.

2. Checks and Drafts.

All requests for checks, drafts or other orders for payment of money, notes or other evidence of indebtedness in excess of \$500.00 issued in the name of the BID shall be signed by the President prior to being submitted to the City for issuance of a check.

3. Rules and Regulations.

Each Member shall observe such reasonable rules and regulations as the same are established from time to time by the Board and delivered or presented to the members. Meetings shall be governed by Robert's Rules of Order or other similar procedural rules and shall comply with the Brown Act.

CERTIFICATION

The duly elected and acting Secretary of the MARINE AVENUE BUSINESS IMPROVEMENT DISTRICT, a Business Improvement District, certified that the above Bylaws, consisting of 7 pages, are the Bylaws of this BID as adopted by the Board of Directors on March 19, 2009, and that they have not been modified or amended since that date.